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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

REX CARL EDWARDS,

Defendant and Appellant.

E071821

(Super.Ct.No. BAF1700906)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.
Affirmed.

William J. Capriola, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Rex Carl Edwards of second degree murder after he shot and killed Susan Perez. Edwards argues that the trial court erred by instructing the jury with

CALCRIM No. 361 (“Failure to Explain or Deny Adverse Evidence”). We conclude that the court did not err, and even if it did, the claimed error was not prejudicial. We therefore affirm.

BACKGROUND

Rose Marie Hopkins was Edwards’s mother. The two were very close; he visited her approximately once per week and regularly talked to her on the telephone. Hopkins had a long-term domestic partner, Charles Williams. Hopkins and Williams had neighboring mobile homes at a mobile home park.¹

Williams and Perez—the murder victim—had an affair and lived together in his home. Perez moved in about eight years before the events of this case. According to Hopkins, she and Perez were “[v]ery unfriendly.” They argued once per week on average and called each other derogatory or profanity-laced names. Perez threatened to kill Hopkins almost every time they encountered each other. Hopkins believed that Perez would carry out that threat and told Edwards so.

Williams died in August 2017 and left his home to Hopkins in his will. Two days after Williams’s death, Perez and her boyfriend were at Williams’s home. Edwards entered the home to turn off the air conditioner at his mother’s direction. Perez’s boyfriend confronted Edwards and asked who he was. Edwards replied that he was the homeowner, and the boyfriend said that he was not—the homeowner had just died. The

¹ Hopkins died before Edwards’s trial. She testified at a recorded conditional examination before her death. Both the People and Edwards used portions of her conditional examination at trial.

two men got into a violent physical fight that ended with Edwards fleeing the home.

Hopkins found Edwards outside, covered in blood and dragging himself along the chain link fence. He had broken ribs, missing teeth, and cuts and bruises all over his body.

A few hours later, Hopkins heard a loud explosion outside her bedroom window and saw Perez's boyfriend picking up debris in the area. Hopkins started sleeping on the couch with a gun after that. She told Edwards that she was afraid and not sleeping, and Edwards started spending the night at her home.

Nine days after the fight between Edwards and Perez's boyfriend, Perez and her boyfriend went to Williams's home to retrieve some of her belongings. Edwards was watching television when Hopkins told him that Perez was next door moving things out. Hopkins said that she wanted to see what Perez was taking, but Edwards told Hopkins to stay home and that he would "deal with it." Perez and her boyfriend were walking to her car when Edwards rushed up to Perez and, without a word, shot her from two to three feet away. She fell to the ground, and he shot her several more times. Her boyfriend tried to move towards her, and Edwards pointed the gun at him and asked if he "'want[ed] some too.'" Edwards sat down outside until the police arrived. A bystander asked Edwards, "[W]hy would you do this? What's wrong with you?" Edwards replied that it was because Perez was harassing his mother.

Perez had two gunshot wounds on her back and one on her left hand. Both of the shots to her back were fatal. One of the bullets passed through her spinal cord and landed in her right lung. The other passed through her aorta and heart.

Edwards testified in his own defense. He said that he was worried Perez was going to kill his mother, particularly after his fight with Perez's boyfriend and the explosion outside his mother's home. He had seen his mother and Perez argue a dozen to two dozen times. Perez's "favorite" threat was, "'My eyes are the last thing you're going to see. You're going to die looking into my face.'" He did not believe law enforcement would help. He had sought help from the management of the mobile home park numerous times, but management never took any action.

Edwards recalled his mother telling him that Perez was there on the night of the shooting, but he did not know what happened after that. He believed that he lost consciousness at that moment, and he did not regain consciousness until he saw Perez lying on the ground. He claimed that, when his mother told him Perez was there, "My brain just kind of exploded. It was like a dam bursting. I saw like a bright light, and the next thing I knew I was standing in front of [Perez] looking at her face down the end of a gun. And it flashed a few times." He could not say what happened between hearing that Perez was there and "looking down the end of the gun"—he could "only speculate." He did not know how he got outside, and he did not "remember thinking or feeling anything." Edwards also said that he did not remember the "shooting sequence," and he did not specifically remember shooting Perez. Still, at another point in his testimony, he said that he remembered pulling the trigger while aiming at Perez's head, but he did not remember having any intent to kill her. He denied having any plan or intent to kill her. He deeply regretted shooting Perez, and he wanted and expected to be punished.

The prosecutor asked Edwards whether he remembered making numerous statements to law enforcement after the shooting; he recalled some of those statements but did not recall many others. He explained that he lied to law enforcement to incriminate himself so that he would be executed. He thought he deserved to die.

Edwards offered six character witnesses who testified to his nonviolent character. Several of them had also witnessed Perez threaten Hopkins's life.

In rebuttal, the prosecutor played a recording of Edwards's interview with the Riverside County Sheriff's Department.² Edwards told deputies that he had been planning to kill Perez since the fight with her boyfriend. When he heard that she was next door, the only thought he had was "[g]et her" or "[k]ill her." He explained: "Nothing was gonna stop me from killin' her. Nothing." He walked straight over to her, did not say a word, and shot her without hesitation. He emptied his gun of bullets to ensure that she was dead. There was no confrontation between them, and she was not a threat to anyone at the time. He told the deputies that he made a conscious decision to kill her and that he did not have an "out of body experience."

The court instructed the jury on unconsciousness, as well as imperfect self-defense and imperfect defense of another. Although the People sought a first degree murder

² Deputies conducted the interview in violation of *Miranda v. Arizona* (1966) 384 U.S. 436, at pages 444-445, insofar as they continued to interview Edwards after he invoked his right to counsel. The People conceded that Edwards's interview statements were not admissible in their case-in-chief. The court instructed the jurors that they could consider his interview statements only to help them decide whether to believe his testimony and that they could not consider the statements for their truth or for any other purpose. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 63; CALCRIM No. 356 ["*Miranda-Defective Statements*"].)

conviction, the jury found Edwards guilty of second degree murder. It also found true the allegation that Edwards had personally and intentionally discharged a firearm proximately causing death to another person. The court sentenced Edwards to 40 years to life in prison, consisting of 15 years to life for the murder conviction and 25 years to life for the firearm enhancement.

DISCUSSION

Edwards argues that the court prejudicially erred by instructing the jury with CALCRIM No. 361. We disagree.

The challenged jury instruction stated: “If the defendant failed in his testimony to explain or deny evidence against him, and if he could reasonably be expected to have done so based on what he knew, you may consider his failure to explain or deny in evaluating that evidence. Any such failure is not enough by itself to prove guilt. The People must still prove the defendant guilty beyond a reasonable doubt. [¶] If the defendant failed to explain or deny, it is up to you to decide the meaning and importance of that failure.”

We review the claim of instructional error de novo. (*People v. Mitchell* (2019) 7 Cal.5th 561, 579.) CALCRIM No. 361 “applies only when a defendant completely fails to explain or deny incriminating evidence, *or* claims to lack knowledge and it appears from the evidence that the defendant could reasonably be expected to have that knowledge. The instruction acknowledges to the jury the ‘reasonable inferences that may flow from *silence*’ when the defendant ‘fail[s] to explain or deny evidence against him’ and ‘the facts are peculiarly within his knowledge.’ [Citation.] As to incriminating

evidence that a testifying defendant denies or explains, there is no silence from which an inference ‘may flow.’ [Citation.] Even if the defendant’s testimony conflicts with other evidence or may be characterized as improbable, incredible, unbelievable, or bizarre, it is not . . . ‘the functional equivalent of no explanation at all.’” (*People v. Cortez* (2016) 63 Cal.4th 101, 117, first italics added.) “[T]he focus of CALCRIM No. 361, as its language indicates, is not on the defendant’s credibility as a witness, but on the role of a testifying defendant’s failure to explain or deny incriminating evidence in how jurors ‘evaluat[e] that evidence,’ i.e., the evidence the defendant has failed to explain or deny.” (*Id.* at p. 118.)

In this case, the instruction was justified by Edwards’s claim that he lacked knowledge of the events during the crucial moments of the shooting, from the moment he heard that Perez was next door to the moment he saw her lying on the ground. He could reasonably be expected to have such knowledge. According to Hopkins, Edwards told her to stay home and he would deal with Perez. According to Perez’s boyfriend, who was with Perez when the shooting occurred, Edwards rushed up to Perez and shot her without a word from a distance of two to three feet, then shot her more after she fell. Yet Edwards claimed that he could only speculate as to what happened during those moments and could not explain what he was thinking. The testimony of the other witnesses provided circumstantial evidence of his intent to kill, supporting the murder charge. The jurors were entitled to evaluate that evidence in light of Edwards’s claimed lack of knowledge.

Edwards argues that “there were no significant omissions in his testimony at all,” but his failure to remember anything from the moments right before he killed Perez is significant enough. And his claim that he was unconscious did not render the instruction inapplicable—the jury could still reasonably expect that he would know how and why he acted during those crucial moments. This is particularly true because he offered no explanation for his unconsciousness, such as intoxication or mental illness.

In any event, any putative error in giving the instruction was harmless. There is no reasonable probability that the jury would have reached a more favorable verdict if the court had not given it. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) First, the instruction exhibited a “carefully constructed internal balance” that mitigated any prejudicial effect: It permitted but did not require the jury to draw an adverse inference, highlighted the People’s burden to prove guilt beyond a reasonable doubt, and instructed the jury that the failure to explain or deny alone was not sufficient to prove guilt. (*People v. Vega* (2015) 236 Cal.App.4th 484, 502.) Second, the evidence of Edwards’s guilt was strong. Edwards argues that the instruction improperly impugned his credibility, and without it, it was reasonably probable the jury would have found that the People failed to carry their burden with respect to consciousness or imperfect defense of his mother. But his credibility was impugned most significantly by his own statements to law enforcement right after the shooting. He impeached his trial testimony on a number of key points—he admitted that he intended to kill Perez, had been planning to do so for days, and was conscious during the event. Moreover, as noted, his claim of unconsciousness was weak, given his failure to offer an explanation for the sudden, short,

and selective lapse of consciousness. In short, the court did not err, but even assuming that it did, we see no reasonable probability that Edwards would have obtained a more favorable result in the absence of the challenged instruction.

DISPOSITION

The judgment is affirmed.

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MENETREZ
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.